JTH Tax, Inc. v. Reed Doc. 20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX SERVICES, INC.
d/b/a LIBERTY TAX SERVICE,

Plaintiff,

v. **Civil No. 2:07cv169**

JEROME REED,

Defendant.

RESPONSIVE PLEADINGS

COMES NOW Jerome Reed, by counsel, (herein after "Reed") and for his responsive pleadings to the Complaint of JTH Tax Service, Inc. d/b/a Liberty Tax Service (herein after "Liberty"), and states as follows:

A. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Reed alleges that the amount in controversy alleged and contained in the affidavit of Jon Gundran attached to the Complaint reveals that the amount in controversy is $10,626.80. The amount in controversy fails to meet the requirements of 28 U.S.C. Sec.1332(a), and accordingly must be dismissed for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(h)(3).

B. ANSWER

Without waving his Motion to Dismiss, Reed denies each and every allegation contained in the Complaint except for any matter specifically admitted in his Answer which follows.

1. Reed is without sufficient information to admit or deny paragraph 1, but does not contest the allegations contained in paragraph 1.

2. It is admitted that Reed was induced to enter into various franchise agreements with

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Liberty for territories located in New Jersey.

3. Paragraph 3 sentence one is admitted. Paragraph 3. sentences two and three refer to documents for which no response is required. If a response to the allegations concerning these documents may be required, Reed does not dispute that the copies of the documents are genuine.

4. It is admitted that Reed was induced to enter into various franchise agreements with Liberty for territories located in New Jersey.

5. Paragraph 5 is admitted.

6. Reed does not contest personal jurisdiction in Virginia, but does deny that subject matter jurisdiction exists in this case pursuant to Federal Law.

7. Paragraph 7 is denied.

8. Venue in Virginia Beach, Virginia is not disputed.

9. It is admitted that Reed was induced to enter into various franchise agreements with Liberty for territories located in New Jersey. Plaintiff's characterization of the agreements is denied.

10. Paragraph 10 is denied, and Reed demands strict proof thereof.

11. Paragraph 11 is admitted to the extent that a notice was sent. It is denied that the notice was sufficient.

12. Paragraph 12 is denied, in that Reed was not given an opportunity to cure any alleged deficiency, due to Plaintiff's actions.

13. Paragraph 13 is admitted that a notice was sent. It is denied that the franchise agreement(s) were properly terminated.

14. No response is required, other than the responses previously stated for paragraphs 1-13.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied, other than it is admitted that Reed filed a lawsuit was filed in the State of New Jersey against the Plaintiff.

AFFIRMATIVE DEFENSES

17. Reed further asserts the affirmative defenses of estoppel, failure of consideration, fraud, frustration of contract, impossibility of performance, and any other affirmative defense which may be revealed through discovery or otherwise.

18. To the extent that the facts of the supposed termination violate the New Jersey Franchise Practices Act, the New Jersey Consumer Fraud Act, or any applicable Virginia law regarding franchises or general contract principles, Reed asserts these laws, and the damages arising from Liberty's breach thereof, either as affirmative defenses or offsets to the claim of the Plaintiff.

WHEREFORE, having answered, Jerome Reed prays that the Complaint of JTH Tax Service, Inc. d/b/a Liberty Tax Service be dismissed and that he be awarded his attorney's fees and costs for defense against this action and for such other and further relief as may be necessary and just in the premises.

JEROME REED

By:________/s/_________________

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September 2007, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the Following:

Vanessa Mercurio Szajnoga, Esq.,
Liberty Tax Service,
1716 Corporate Landing Parkway,
Virginia Beach, VA 23454

And I hereby certify that I will also fax the document to:

Vanessa Mercurio Szajnoga, Esq., 800-790-3863
Liberty Tax Service,
1716 Corporate Landing Parkway,
Virginia Beach, VA 23454

/s/

Jeffrey A. Fleischhauer, Esq.
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